IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.725 of 2001

Reserved on 11.4.2007

Date of decision 20.4.2007

Roop Singh Negi Petitioner

Vs.

PNB and others Respondents

Coram:

The Hon'ble Mr.Justice V.K.Ahuja, Judge.

The Hon'ble Mr.Justice Kuldip Singh, Judge

Whether approved for reporting?[1] No.

For the Petitioner: Mr. Dushyant Dadwal, Advocate.

For the Respondents : Mr.Ajay Kumar, Advocate

Per V.K.Ahuja,J.

Brief facts of the case are that the petitioner served as a Peon in 1987 with respondent Bank. He was charge sheeted and the Enquiry Report was submitted by the Enquiry Officer of the respondent Bank. Petitioner represented to the Disciplinary Authority i.e. respondent No.3, who rejected the representation of the petitioner. Petitioner filed an appeal before the Authority i.e. respondent No.2, who rejected the appeal of the petitioner. The petitioner was dismissed from the service, vide letter dated 24.1.2001.

We have heard learned counsel for the parties and have gone through the record of the petition carefully.

The submissions made by learned counsel for the petitioner were that there was no evidence as against the petitioner and the Enquiry

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[1] Whether reporter of local papers are allowed to see the judgment ? Yes.

Officer wrongly relied upon the evidence and drew conclusion against the petitioner. It was also submitted that no confession was made by the petitioner, but the said alleged confession made by the petitioner was also used by the Enquiry Officer as against him and since the charge against the petitioner was not established from evidence therefore, the impugned order of dismissal from service passed by the respondent Bank is liable to be quashed.

In reply filed by the respondent Bank they had taken the plea that the petitioner was a 'workman' and remedy was available to him under the provisions of Section 2-A of the Industrial Disputes Act, 1947 and therefore the extra ordinary jurisdiction of this court under Article 226 of the Constitution of India cannot be invoked. It was also submitted that the petitioner was involved into loss of bank draft which was subsequently used in connivance with the petitioner and his guilt had been clearly established in the Enquiry Report and as such the petitioner was rightly dismissed from service and the conclusions drawn by the Enquiry Officer are correct which are based upon evidence. It was also submitted that this court while exercising its discretionary jurisdiction under Article 226 of the Constitution of India cannot reappraise the evidence and draw its own conclusion from the evidence led before the Enquiry Officer.

On perusal of the facts of the case, it is clear that it was a case whether the petitioner should have invoked the jurisdiction of the Industrial Tribunal since he was a 'workman' but the said jurisdiction was not invoked and the present writ petition was filed by the petitioner. The writ jurisdiction can be exercised by this court only in exceptional circumstances which have not been mentioned by the petitioner in the petition. However, once the petition was admitted for hearing in exercise of the writ jurisdiction after a lapse of so many years since the writ petition was admitted in the year 2001, it may not be appropriate for this Court to pass an order now that the petitioner should make out a case for

reference to the Industrial tribunal and therefore the petition filed by the petitioner is being considered.

The learned counsel for the petitioner had relied upon the following decisions to substantiate his case.

The decision in **Kuldeep Singh vs. Commissioner of Police and others,** (1999)2 SCC 10 shows that it was observed by their Lordships that the scope of judicial review under Article 226 and 32 of the Constitution of India is not totally barred in a departmental enquiry. It was further observed that finding of guilt although would not be normally interfered with, held, the court can interfere if the same is based upon no evidence or is as such could not be reached by ordinary prudent man or is perverse or is made at the dictates of a superior authority.

The decision in **Narinder Mohan Arya vs. United India Insurance Co. Ltd. And others**, (2006) 4 SCC 713 shows that High Court while exercising its writ jurisdiction, ought to have examined as to whether the evidence adduced before the enquiry officer had nexus with the charge and could or could not lead to the guilt of the employee. Mere *ipse dixit* of the enquiry officer would not suffice. It was also held that the proceedings of departmental enquiry report are quasi criminal in nature.

The decision in **Bhagwati Prasad Dubey vs. The Food Corporation of India,** AIR 1998 SC 434 shows that there was order for removal from service. It was observed that the conclusions of enquiry officer about proving of charge of misconduct was based on no evidence. It was held that order of removal is liable to be set aside.

All the aforesaid decisions are not directly attracted to the present facts though the law laid down applies to the present facts. But in the facts of the case it is not a case of no evidence but only in regard to the conclusions drawn based upon the evidence which reappraisal cannot be done by this Court.

Coming to the arguments that there can be no reappraisal of the evidence by this court once the findings have been given by the Enquiry Officer considering the evidence, it is not the case of the petitioner that there was no evidence at all as against him led before the Enquiry Officer, but the dispute is in regard to the conclusions drawn by the enquiry Officer based upon evidence. According to law even if two views are possible to be drawn against the petitioner on the basis of the Enquiry Report one which has been drawn by the Enquiry Officer cannot be held to be wrong taking the plea that the second view was also possible to be drawn based upon evidence.

The decision of Hon'ble Apex Court in Narinder Mohan Arya's case (supra) clearly lays down that the proceedings of departmental enquiry report are quasi criminal in nature. Therefore the guilt of the delinquent official is not required to be proved beyond any reasonable doubt as in a criminal case.

We have considered the report of the Enquiry Officer and the penalty imposed by the Bank is based upon evidence as such it is not open to this Court to consider that some other view was also possible and since it was not a case of no evidence therefore there cannot be reappraisal of evidence or draw its own conclusion by this court based upon evidence. The findings recorded by the Enquiry Officer and the punishment imposed by the respondent Bank or its officers call for no interference by this court and as such there is no merit in the petition which is dismissed accordingly.

(V.K. Ahuja), J.

April 20 ,2007(g) **(Kuldip Singh), J.**